

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application: Tianqing He et al.

Confirmation No. 2502

Application No.: 10/714,471

Group Art Unit: 3743

Filed: November 15, 2003

Examiner: Jiping Lu

For: **Device and Methods for Rapid Drying of Porous Materials**

Date: October 22, 2009

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT
OR IN THE ALTERNATIVE TO REVIVE AN ABANDONED APPLICATION**

Sir:

I. Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181

Applicant respectfully requests that the abandonment status of the above-referenced application be withdrawn due to the loss by the USPTO of a reply (Appeal Brief and associated fee) timely filed by Applicant as will be discussed below. A Notice of Abandonment ("Notice") for the above-identified application was mailed on November 12, 2008 to the correspondence address of the prior attorney of record. The Notice states that the application became abandoned because the Appeal brief filed on 27 February 2008 was not acceptable for the reasons indicated below:

- (a) the Appeal brief and/or the brief fee was untimely; and
- (b) the statutory fee for filing the brief was not submitted.

Mr. Michael Mauney, prior patent counsel for the Applicant, states that he (personally) timely mailed the Appeal brief on December 13, 2007 along with the brief fee in the form of a check for \$255 and a return receipt postcard. *See* M. Mauney Statement, Tab D. Copies of check number 4234 with the brief fee payment and the return receipt postcard are attached at Tab A. A copy of the accompanying transmittal cover letter with a Certificate of mailing and the "Certificate of Service" certifying that the "foregoing brief" was deposited in a prepaid first class envelope on December 13, 2007 addressed to the Board of Patent Appeals and Interference are also attached at Tab A. Mr. Mauney has stated that he has never received the returned check or the return receipt postcard. Mr. Mauney also states that he did

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Filed: November 15, 2003
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not receive and was unaware of the Notice of Abandonment mailed November 12, 2008 until the end of September 2009 (less than two months prior to this submission).

Pursuant to 37 CFR 1.8(a), correspondence required to be filed in the U.S. Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described therein is followed.

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with 37 CFR 1.8 (a), but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission.

As indicated by the Image File Wrapper available on PAIR, when Mr. Mauney failed to receive the stamped return receipt postcard for the Appeal brief, he promptly informed the USPTO of this fact well before the date of the mailing of the Notice of Abandonment. For example, Mr. Mauney provided an additional copy of the Appeal brief to the USPTO on February 27, 2008 and again on April 9, 2008. The transmittals with these submissions included a statement that the undersigned timely filed the Appeal brief and mailed the brief with the fee on December 13, 2007. The transmittal filed on February 27, 2008, titled, "Notice of Prior Filing of Appeal Brief and Fee" explains the prior timely submission with copies of the prior filed documents and the check and requests that the Examiner call Mr. Mauney if there were any questions or comments. A copy of the transmittal with the statement filed on February 27, 2008 is attached at Tab B. A copy of the letter with a similar statement accompanying the April 9, 2008 submission is attached at Tab C. *See also*, M.

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Mauney Statement, Tab D.

Despite these communications, the February 27, 2008 submission apparently triggered the Notice of Abandonment mailed on November 12, 2008, which indicated that the Appeal brief mailed on February 27, 2008 was untimely and was missing the brief fee. The Notice of Abandonment did not address Mr. Mauney's prior timely submission of the Appeal brief and fee on December 13, 2007.

It is respectfully submitted that Mr. Mauney complied with 37 CFR 1.8(a) using a certificate of mailing and notified the USPTO of the prior submission pursuant to 37 CFR 1.8(b), well before the mailing of the Notice of Abandonment.

In view of the foregoing, Applicant submits that the application was improperly deemed abandoned and requests that the abandoned status be withdrawn.

II. First Alternative Basis for Relief

If the application was properly deemed abandoned, and the above basis is not available for relief, then Applicant respectfully requests that this be considered a Petition to Revive an Unavoidably Abandoned Application under 37 CFR 1.137(a).

In further support of this basis for relief, Mr. Mauney states that he is a solo practitioner and personally opens incoming mail from the Patent and Trademark Office. Mr. Mauney states that he timely mailed the Appeal Brief and Fee with a certificate of mailing. He also notified the USPTO of these submissions at least twice. Mr. Mauney states that he did not become aware of the Notice of Abandonment until the Applicant notified him of this status based on a review of PAIR at the end of September 2009. *See*, M. Mauney Statement, Tab D.

Applicant respectfully submits that the facts described above evidence that the entire delay in filing the required reply (Appeal brief/brief fee) from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable. Applicant respectfully requests that the application be revived.

III. Second Alternative Basis for Relief

If the application was properly deemed abandoned, and the above two bases for relief are not appropriate, then Applicant respectfully requests that this be considered a Petition to

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Filed: November 15, 2003
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Revive an Unintentionally Abandoned Application under 37 CFR 1.137(b). The entire delay in filing the required reply (Appeal brief/brief fee) from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional and Applicant respectfully requests that the application be revived.

IV. Authorized Fees

The Commissioner is authorized to charge the appropriate petition fee(s) and the Appeal brief fee required by 37 C.F.R. § 1.17(m) (small entity), any additional fee, or credit any refund, to our Deposit Account No. 50-0220.

Applicants respectfully request that the abandonment status of the above-identified application be withdrawn or the application be revived.

Respectfully submitted,

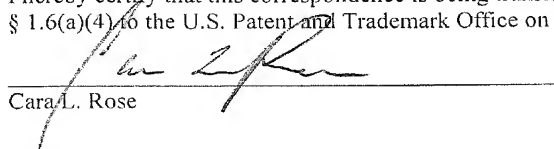


Julie H. Richardson
Registration No. 40,142

USPTO Customer No. 20792
Myers Bigel Sibley & Sajovec
Post Office Box 37428
Raleigh, North Carolina 27627
Telephone: 919/854-1400
Facsimile: 919/854-1401

CERTIFICATION OF TRANSMISSION

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on October 22, 2009.



Cara L. Rose

Tab A

Identification Inetrotek - Core DrySerial No. 10/714,471

The date stamp on this card is the date on which the

☐ Application☐ Response to Office Action☐ Fee☒ Other Appeal Brief

was received at the Patent and Trademark Office.

PLEASE RETURN BY MAIL.

Please Date Stamp Below RECEIVED
CENTRAL FAX CENTER

FEB 27 2008

MICHAEL E MAUNEY
COASTAL INTELLECTUAL PROPERTY LAW
P O BOX 10288 PH 437-0056
SOUTHPORT, NC 28481

4234

DATE 12/13/2007BB-3D/BS1
463PAY
TO THE
ORDER OFUSPTO\$ 255.00Two Hundred Fifty Five & 00/100

DOLLARS

Amount in Words
Must be on BackFIRST CITIZENS BANK
www.firstcitizens.com

FOR

Michael E Mauney

FEB 27 2008

 FILE COPYIN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCE

In Re Application: Tianqing He et al. Examiner: Jiping Lu
Filing Date: 11/15/03 Art Unit: 3749
Serial No: 10/714,471 Appeal No.:
Invention: DEVICE AND METHODS FOR RAPID DRYING OF POROUS MATERIALS

December 13, 2007

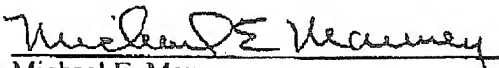
Board of Patent Appeals and Interference
United States Patent and Trademark Office
Post Office Box 1450
Alexandria, VA 22313-1450

Re: Filing of Appeal Brief

Dear Sir or Madam:

In accordance with current practice, enclosed is a Brief in the Appeal of the above case Serial No.: 10/714,471. Also enclosed is a check for two hundred and fifty-five dollars (\$255.00) the cost for filing a Brief for a small entity. Also enclosed is a return receipt post card. Please stamp the post card showing the date the Brief was received and return it to me. If anything further is required from me, please notify me immediately. Thank you very much for your immediate attention to this.

This the 13 day of Dec., 2007.


Michael E. Mauney
Attorney for the Appellant
Post Office Box 10266
Southport, NC 28461
Telephone (910) 457-0056
Registration #33731

CERTIFICATE OF SERVICERECEIVED
CENTRAL FAX CENTER

FEB 27 2008

I, Michael E. Mauney, do hereby certify that a copy of the foregoing Brief of the Appellant
in:

In Re Application: Tianqing He et al.

Filing Date: 11/15/03

Serial No: 10/714,471

Invention: DEVICE AND METHODS FOR RAPID DRYING OF POROUS MATERIALS

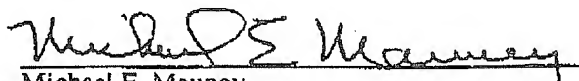
has this day been duly served upon:

Board of Patent Appeals and Interference
United States Patent and Trademark Office
Post Office Box 1450
Alexandria, Virginia 22313-1450

Said service was made in the following manner:

- () By handing such copy to the aforementioned attorney, or by leaving said copy at the above mentioned attorney's office with a partner or employee of his office.
- (x) By depositing a copy of the aforementioned document(s) enclosed in a prepaid first class addressed envelope in the U. S. Mail.

This the 13 day of Dec., 2007.


Michael E. Mauney
Attorney at Law
Post Office Box 10266
Southport, NC 28461
Telephone: (910) 457-0056
Reg. # 33731

Tab B

RECEIVED
CENTRAL FAX CENTER

FEB 27 2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application: Tianqing He et al. Examiner: Jiping Lu
Filing Date: 11/15/03 Art Unit: 3749
Serial No: 10/714,471 Appeal No.:
Invention: DEVICE AND METHODS FOR RAPID DRYING OF POROUS MATERIALS

February 26, 2008

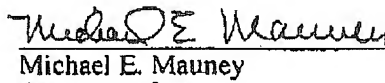
Board of Patent Appeals and Interference
United States Patent and Trademark Office
Post Office Box 1450
Alexandria, Virginia 22313-1450

Re: Notice of Prior Filing of Appeal Brief and Fee

Dear Sir or Madam:

In accordance with the suggestion of a paralegal at the Board of Patent Appeals, the undersigned is filing with the Examiner by fax a Notice a Brief was timely filed on December 13, 2007 by the undersigned in the above entitled Appeal. Accompanying this Notice is a photocopy of the Return Receipt postcard and check that was filed; a photocopy of the one-page cover letter; a photocopy of a 24-page Brief; a one-page Certificate of Service; a Claim Appendix of three pages; and an Evidence Appendix. The fax again is made at the suggestion of a paralegal in the Board of Appeals who suggested that the delay may be a simple administrative delay but that nevertheless a faxed copy of the Brief should be filed with the Examiner. Please call if you have questions or comments.

This the 27 day of Feb, 2008.


Michael E. Mauney
Attorney at Law
Post Office Box 10266
Southport, NC 28461
Telephone (910) 457-0056
Registration #33731

RECEIVED
CENTRAL FAX CENTER

FEB 27 2008

CERTIFICATE OF SERVICE

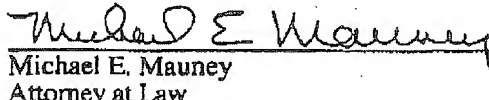
I, Michael E. Mauney, do hereby certify that a copy of the foregoing Notice of Prior Filing of Appeal Brief has this day been duly served upon:

Jiping Lu
Art Unit 3749
United States Patent and Trademark Office
Alexandria, VA 22313

Said service was made in the following manner:

- () By handing such copy to the aforementioned attorney, or by leaving said copy at the above mentioned attorney's office with a partner or employee of his office.
- () By depositing a copy of the aforementioned document(s) enclosed in a prepaid first class addressed envelope in the U. S. Mail.
- (x) By fax to 571-273-8300.

This the 27 day of Feb., 2008.



Michael E. Mauney
Attorney at Law
P.O. Box 10266
Southport, N.C. 28461
1-910-457-0056
Reg. # 33,731
State Bar # 7894

Tab C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

| | | | |
|--------------------|---|-------------|-----------|
| In Re Application: | Tianqing He et al. | Examiner: | Jiping Lu |
| Filing Date: | 11/15/03 | Art Unit: | 3749 |
| Serial No: | 10/714,471 | Appeal No.: | |
| Invention: | DEVICE AND METHODS FOR RAPID DRYING OF POROUS MATERIALS | | |

April 9, 2008

Board of Patent Appeals and Interference
United States Patent and Trademark Office
Post Office Box 1450
Alexandria, Virginia 22313-1450

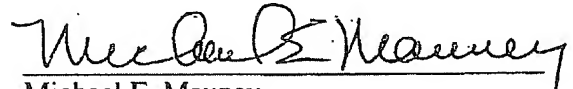
Re: Filing of Appeal Brief and Fee

Dear Examiner Lu:

On December 13, 2007 I signed and filed an appeal brief. I included in that mailing a check for \$255.00 for the cost of filing a brief for a small entity. I never received the return receipt postcard and the check that was included in the December 13 mailing has never been cashed. I waited a reasonable time until following through and then called the Patent Appeal Board and was advised by a paralegal there that the brief should be faxed to the examiner. The undersigned was told that the board call record number for this call was 1108908910. The undersigned then faxed the brief, proof of mailing of the brief, a photocopy of the check and return receipt postcard all included with the original brief filed in December 2007 as well a Notice of Prior Filing of the appeal brief and fee. At the time of the phone call to the board of patent appeals, the undersigned was told that the delay in acknowledgement of the filing of the brief could have been due to simple administrative delays within the patent office itself and it is possible that the brief and check was received but had not yet been processed. However, more than a month has now passed and the undersigned again called the Board of Patent Appeals and was told to contact the tech office and the examiner directly. I respectfully request guidance from the examiner regarding this lost brief

and whether the check that was originally included should be canceled with a new check issued. I also request guidance as to whether the original brief filed in December 2007 has been received and whether duplicate briefs are required or if there is anything else the undersigned can do to expedite this appeal to make sure that both the brief and fee is timely filed. Thank you very much for your immediate attention to this and for any help you can provide .

This the 9 day of April, 2008.


Michael E. Mauney
Attorney at Law
Post Office Box 10266
Southport, NC 28461
Telephone (910) 457-0056
Registration #33731

CERTIFICATE OF SERVICE

I, Michael E. Mauney, do hereby certify that a copy of the foregoing Letter in:

In Re Application: Tianqing He et al.

Examiner: Jiping Lu

Filing Date: 11/15/03

Art Unit: 3749

Serial No: 10/714,471

Appeal No.:

Invention: DEVICE AND METHODS FOR RAPID DRYING OF POROUS MATERIALS

has this day been duly served upon:

Jiing Lu, Examiner
Art Unit 3749
Commissioner of Patents
Post Office Box 1450
Alexandria, VA 22313-1450

Said service was made in the following manner:

- () By handing such copy to the aforementioned attorney, or by leaving said copy at the above mentioned attorney's office with a partner or employee of his office.
- (x) By depositing a copy of the aforementioned document(s) enclosed in a prepaid first class addressed envelope in the U. S. Mail.

This the 9 day of April, 2008.

Michael E. Mauney
Michael E. Mauney
Attorney at Law
Post Office Box 10266
Southport, NC 28461
Telephone: (910) 457-0056
Reg. # 33731

Tab D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| | | | |
|--------------------|---|-------------|-----------|
| In Re Application: | Tianqing He | Examiner: | Jiping Lu |
| Filing Date: | 11/15/03 | Art Unit: | 3749 |
| Serial No: | 10/714,471 | Appeal No.: | |
| Invention: | DEVICE AND METHODS FOR RAPID DRYING OF POROUS MATERIALS | | |

October 7, 2009

Commissioner of Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir or Madam:

NOW COMES the undersigned and declares as follows:

1. My name is Michael E. Mauney. I am an Attorney of Law and registered before the Patent and Trademark Office with Registration #33,731.
2. Until September of 2009, I represented the Applicants and the Assignor, InstroTek, in prosecuting the above application and Appeal.
3. That on December 13, 2007 I personally mailed an Appellant Brief along with a Certificate of Service, a check, and other materials to the Patent and Trademark Office perfecting the Appeal. When I grew concerned that the check had not been cashed and the return receipt postcard had not been returned, I called the Patent and Trademark Board to inquire about the status of the Appeal. As recommended by the Patent and Trademark Board, on February 27, 2008, I filed

a Substitute Brief by fax, directed to the Examiner Jiping Lu. When I did not hear anything from the Examiner Jiping Lu in response to the Appellant Brief, I called the Patent Board of Appeals and was told to contact the Examiner directly. I did so by letter on April 9, 2008. In the letter I notified the Examiner of the prior filing of the appeal Brief and fee on December 13, 2007 and I requested guidance from the Examiner regarding the apparent lost Brief and the apparent lost check. I asked the Examiner to notify me if "there is anything else the undersigned can do to expedite this Appeal to make sure both the Brief and the fee is timely filed."

4. I am a sole practitioner and handle all mail myself. That is, when correspondence is mailed from my office to the Patent and Trademark Office, I take it to the Post Office and mail it, and at the time I mail any outgoing mail I also get incoming mail sent to my Post Office box. I personally open mail that is sent to my office, including all correspondence from the Patent and Trademark Office. I then file the mail myself in the appropriate file.


5. It came to my attention in September of 2009 that a Notice of Abandonment had been filed by the Examiner in the above case. The Notice of Abandonment was filed despite my notification and brief sent on February 27, 2008 and my April 9, 2008 letter in which I had requested guidance from the Examiner regarding the apparent lost Brief. I never heard anything from the Examiner in response to either the Brief or the letter. I erroneously assumed that as a matter of professional courtesy, if not common courtesy, I would have received a response to my April 9, 2008 letter from the Examiner before a Notice of Abandonment was filed. I assumed that the delay was occasioned by the Examiner preparing a Response Brief to the Brief that I had filed.

6. The undersigned states on personal knowledge that no mailed Notice of Abandonment has ever been received in my office regarding the above Appeal and that the first the undersigned learned of it was in September of 2009 when advised by the client of the Notice of Abandonment.

THE UNDERSIGNED states that all statements made herein of my own knowledge are

true and that all statements made on information and belief are believed to be true; and further, that these statements are made with knowledge that willful false statements and the like so made are punishable by fine, imprisonment, or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

This the 8 day of Oct., 2009.


Michael E. Mauney
Attorney at Law
Post Office Box 10266
Southport, NC 28461
Telephone (910) 457-0056
Registration #33731